THE HON'BLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH]

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W.P.NO.8539 OF 2001

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O R D E R (Per the Hon'ble Sri Justice G.Chandraiah)

Heard both the counsel.

2. This writ petition is filed seeking a writ of certiorari calling for the records pertaining to the judgment in L.G.A.No.37/1999 dated 2.11.1999 on the file of Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 at Hyderabad wherein the judgment of the Land Grabbing Special Tribunal cum District Judge, Nellore passed in L.G.O.P.No.33/1990 dated 27.1.1999 was confirmed; and quash the same as illegal and contrary to the law and pass such other order or orders as this Court deems fit and proper in the interest of justice.

3. Before adverting to the rival contentions of both parties, we feel it expedient to briefly note the case of the respective parties and the findings of both the courts below.

4. The case of the 1st respondent herein who was the applicant before the Special Tribunal is that the petition schedule property originally belonged to the Government and on 30.5.1970 the Tahsildar, Nellore had assigned the same to him as per the rules and regulations and he also paid the necessary amount and accordingly was in possession and enjoyment of the same. In the year 1983 the writ petitioner without any manner of right and title entered into the land to an extent of 3 ankanams and constructed a thatched house and due to his employment he could not know the same immediately and after some time he learnt the same and demanded the writ petitioner to vacate the petition schedule site and that she requested him that she shall

pay the rent and would vacate as and when required. Therefore, he kept quiet. In the year 1987 when the 1st respondent demanded the writ petitioner to vacate the petition schedule land within one month, she filed the suit in O.S.No.274/1987 and obtained temporary injunction on the ground that she was assigned patta in respect of the petition schedule land on 12.4.1985 by the Tahsildar, Indukurpet. The further case of the 1st respondent is that the Tahsildar of Indukurpet has no jurisdiction to assign the petition schedule land, as the same is situate within the jurisdiction of the Nellore Municipality. Therefore he filed the petition seeking to evict the writ petitioner by declaring her as a land grabber.

5. In the counter filed to the original petition the case of the writ petitioner while denying the averments made by the 1st respondent in the petition, was that she is the absolute owner of the petition schedule site and she has been in possession and enjoyment of the same since 1980 by constructing a thatched house in an extent of 3 ankanams with fencing and on 12.4.1985 the Tahsildar of Indukurpet issued proceedings in R.C.No.284/85 granting patta and that she has been paying the municipal taxes and obtained ration card and electric connection and that when the 1st respondent tried to encroach, she filed the suit in O.S.No.274/1987 on the file of District Munsif Nellore for permanent injunction and the same was decreed. Therefore her case is that she is not the land grabber and that the petition has to be dismissed.

6. Based on the rival pleadings, the Special Tribunal framed the following issues for trial:

1. Whether the petitioner has title to the property?
2. Whether the respondent grabbed the property?
3. Whether the petitioner is entitled to the reliefs sought in the petition?

7. In support of the case of the 1st respondent, who was

the petitioner before the Tribunal, P.Ws.1 and 2 were examined and Exs.A-1 to A-6 were got marked and Ex.X-1 was got marked through P.W.2. On behalf of the writ petitioner, who was respondent before the Tribunal, R.Ws.1 to 3 were examined and Exs.B-1 to B-3 were got marked.

8. Considering the evidence, both oral and documentary lead by the respective parties and appreciating their contentions, the Tribunal concluded that the 1st respondent established that he was granted patta and hence he has title to the property and that the writ petitioner committed an act of land grabbing and thus she is a land grabber and thereby directed the writ petitioner to deliver the property within two months from the date of the order. Aggrieved thereby the writ petitioner preferred appeal and the Special Court based on the material on record framed the following issue for consideration:

> Whether the petitioner (1st respondent herein) is the owner of the petition schedule property and whether the respondent (writ petitioner herein) is a land grabber?

9. Re-appreciating the relevant evidence on record, the Special Court also concurred with the finding of the Tribunal and held that the title of the 1st respondent is established to the petition schedule property and that the writ petitioner has no title whatsoever and thereby dismissed the appeal. Hence the present writ petition.

10. The contention of the counsel for the writ petitioner, while reiterating the counter averments made before the Tribunal and also the averments in the writ affidavit, is that the writ petitioner is not the land grabber as she had been granted patta and possession was given by the revenue officials under Ex.B-1, which has not been cancelled. Further the 1st respondent has not taken the actual possession of the petition land pursuant to Ex.A-1 patta and it was only a paper possession and as per the

conditions of assignment, the 1st respondent has to construct house within twelve months, but he did not construct any house and further the writ petitioner also obtained decree of permanent injunction with respect to the petition schedule land in O.S.No.274/1987 on the file of Principal District Munsif, Nellore and the same has become final. The 1st respondent has not proved his possession. It is further sought to be contended that the writ petitioner cannot be found fault with in issuance of Ex.B-1 as she is not aware about the territorial jurisdiction of the Tahsildar of Indukurpet. It is also contended that in view of the above facts and circumstances the writ petitioner is entitled for regularization of occupancy or for the issue of necessary assignment orders. It is finally contended that the writ petitioner cannot be termed as a 'land grabber' as she did not commit any act of land grabbing and the Special Tribunal has no jurisdiction to entertain the petition.

11. The counsel for the 1st respondent reiterating the averments made in the petition filed before the Tribunal, sought for dismissal of the writ petition by confirming the impugned judgment and decree of the Special Court.

12. During the pendency of the writ petition, W.P.M.P.No.22870/2006 has been filed by one Ganta Jashuva s/o late Chenniah claiming that the petition schedule land was granted in favour of his vendor V.Hanumantha Rao vide proceedings E7/4196/68 dated 25.1.1969 and subsequently he conveyed the plot in his favour through a possessory agreement dated 15.1.1980 for a sale consideration of Rs.2,500/- and that the name of his vendor appeared in the eligibility list at Sr.No.4 of the Commercial Taxes Department in Ex.X-1. Therefore he sought to get impleaded in the writ petition as an interested party.

13. In view of the above rival contentions the point that arises for our consideration is, whether the courts below have

committed any jurisdictional error in declaring the writ petitioner as a 'land grabber'?

14. In order to consider the above issue it is necessary to note the cases of the respective parties and to re-examine the evidence on record. The case of the 1st respondent is that on 30.5.1970 he was granted patta in respect of the suit land under Ex.A-1 on payment of required charges and that in the year 1983 the writ petitioner occupied the petition schedule land without any manner of right and title and constructed a thatched house in an extent of 3 ankanams and due to his employment he could not know the same immediately and after some time when he demanded her to vacate, she requested that she would pay the rent and vacate as when required and therefore, he kept quiet and in the year 1987 when he demanded her to vacate within one month, she filed suit in O.S.No.274/1987 and obtained temporary injunction on the ground that Thasildar of Indukurpet had granted her patta on 12.4.1985. His further case is that Thasildar of Indukurpet has no jurisdiction to issue patta in respect of the petition schedule land as the same is situate within the territorial jurisdiction of Nellore Municipality. On the other hand the case of the writ petitioner is that she has been in possession since 1980 and on 12.4.1985 patta under Ex.B-1 was granted and she also obtained a decree of permanent injunction in O.S.No.274/1987. From the case of the 1st respondent it is to be seen that he came to know about the occupation of the writ petitioner some time after 1983 and as the writ petitioner offered to pay rent and agreed to vacate as and when required, he kept quiet. While examining himself as P.W.1, he testified to this effect. Though by examining P.W.2 the concerned Mandal Revenue Officer and by producing relevant documents, the 1st respondent could prove the patta granted in his favour, from the above averment and from his evidence as P.W.1 it can be inferred that he has initially acquiesced the possession of the writ petitioner, since as per his case, she offered rent and agreed to

vacate as and when required. It is also to be seen that the writ petitioner filed suit in O.S.No.274/1987 on the file of Principal District Munsif Court, Nellore with respect to the petition schedule property on the ground that patta was granted to her under Ex.B-1 and obtained permanent injunction in O.S.No.274/1987 on 4.4.1991. The 1st respondent as P.W.1 also admitted this fact. The case of the writ petitioner as noted above is that she has been in possession since 1980 by making some constructions and Ex.B-1 patta was granted to her in the year 1987. Therefore even without going into the merits of the contentions of the respective counsel, in the light of 1st respondent's averment that the writ petitioner offered to pay rent and therefore he kept quiet and also in the light of the writ petitioner obtaining decree of permanent injunction in her favour, we are of the considered view that the possession of the writ petitioner cannot be termed as illegal and without any lawful entitlement and that she entered the petition schedule land with a view to take illegal possession and hence she does not fall within the ambit of Section 2(e) of the Act. Before recording the finding that the writ petitioner was a land grabber, both the Tribunal as well as the Special Court have lost sight of the material averment and the evidence of P.W.1 with regard to the possession of the writ petitioner over the petition schedule land and the effect of the decree of the permanent injunction in O.S.No.274/1987 and were only swayed away by the fact that the 1st respondent could prove Ex.A-1 and that patta was granted in his favour first in point of time and that Ex.A-1 was not cancelled and further Ex.B-1 which was issued subsequently by the Tahsildar of Indukurpet, who has no territorial jurisdiction.

15. Coming to the case of implead petitioner in W.P.M.P.No.22870/2006 it is to be seen that though the proposed respondent produced the patta granted in favour of his vendor with respect to the petition schedule property, he did not produce any document to establish his right. The original

assignee is also not sought to be made as a party. Therefore, we are of the view that he has no *locus standi* to file this implead petition and the same is dismissed.

16. For the foregoing reasons, we are of the view that the Tribunal as well as the Special Court by not considering the material averment and the evidence on record, committed jurisdictional error in declaring the writ petitioner as a land grabber and hence the impugned judgments are liable to be set aside.

17. Accordingly the writ petition is allowed and the impugned orders are set aside. In the circumstances of the case there shall be no order as to costs.

T.CH.SURYA RAO,J

G.CHANDRAIAH,J
AVS
DATE: 07.02.2007

Any observations made *inter alia* in this order may not be taken note of while disposing of the matters and uninfluenced by those observations the matters can be disposed of.

T.CH.SURYA RAO,J

G.CHANDRAIAH,J
DATE:7.2.2007
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